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SHOOK, HARDY & BACON LLP

KANSAS CITY  
OVERLAND PARK  
HOUSTON  
SAN FRANCISCO  
MIAMI

HAMILTON SQUARE  
600 14TH STREET, NW, SUITE 800  
WASHINGTON, D.C. 20005-2004  
TELEPHONE (202) 783-8400 ■ FACSIMILE (202) 783-4211

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November 10, 1999

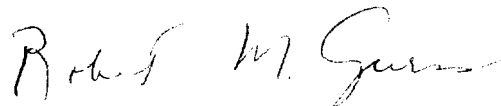
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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445- 12th Street, S.W.  
Washington, DC 20554

Re: APCO International  
Written Ex Parte Communication in DKT. 94-102

Enclosed herewith is an original and two copies of a letter from APCO International for filing in regard to the above-referenced matter. Copies of the letter have been distributed to the individuals listed at the end of the correspondence.

Sincerely,



Robert M. Gurss

Encs.

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# APCO International

ASSOCIATION OF PUBLIC-SAFETY COMMUNICATIONS OFFICIALS INTERNATIONAL, INC.

## EXECUTIVE DIRECTOR

John K. Ramsey

## APCO INTERNATIONAL

### HEADQUARTERS

2040 SOUTH RIDGEWOOD AVENUE  
SOUTH DAYTONA, FLA. 32119-8347  
888 APCO 9-1-1 OR 904-322-2500

## APCO INTERNATIONAL

### GOVERNMENT AFFAIRS OFFICE

1666 K STREET, NW SUITE 1100  
WASHINGTON, D.C. 20006-2897

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Richardson, TX 75083-1078  
1-972-238-3818  
president@apcointl.org

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Communications  
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Bismark, ND 58502-5511  
1-701-328-8150  
pres-elect@apcointl.org

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first-vp@apcointl.org

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second-vp@apcointl.org

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November 9, 1999

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

The Honorable William Kennard  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

RE: Written *Ex Parte* Communication in CC Docket 94-102

Dear Mr. Chairman:

The purpose of this letter is to follow-up on APCO's prior comments and *ex parte* communications in the above-referenced proceeding regarding the Commission's rules governing cost-recovery for wireless carrier implementation of the E9-1-1 rules. We understand that the Commission is likely to act on this matter at its open meeting on November 18.

APCO has recommended that the Commission modify or clarify its rule to require wireless carriers to comply with the E9-1-1 requirements whether or not there is a government sponsored and government-administered mechanism to cover the carriers' costs of implementation. This letter will address some of the objections to APCO's proposal from the National Emergency Number Association (NENA) and in a recent *ex parte* letter from a group of wireless carriers.

NENA, with whom APCO has otherwise worked very closely in this and other proceedings, has indicated its opposition to APCO's proposal regarding cost recovery. One of NENA's principal concerns has been its belief that wireless carriers will be less inclined to work with local government officials in lobbying state legislatures to obtain cost recovery legislation for wireless E9-1-1 expenses incurred by Public Safety Answering Points (PSAPs).

APCO respectfully disagrees and suggests that, if anything, carriers will have a much greater incentive to cooperate with PSAPs if the Commission modifies or clarifies the rules as APCO has suggested. As a preliminary note, we also question whether NENA's concerns, even if valid, would be the appropriate basis for Federal regulation. Nevertheless, we will address the substance of those concerns below.

First, we disagree with NENA's premise that the current interpretation of cost-recovery necessarily leads to carrier cooperation on cost-recovery legislation. While cooperation may have occurred in some states, in others carriers have done nothing or have actually opposed cost-recovery. That is not surprising since there are certainly no incentives under the current interpretation of the rules for the carriers to seek cost-recovery. Absent cost-recovery, carriers have no obligation to meet the E9-1-1 deadlines, a condition many carriers obviously welcome. As evident from the volumes of carrier pleadings in this proceeding, many carriers would like to delay E9-1-1 implementation as long as possible, especially for Phase II (which is far more costly and complex than Phase I).

Second, we believe that our proposal will create, not eliminate, incentives for carriers to help PSAPs on cost-recovery legislation. Carriers will have to comply with the E9-1-1 rules whether or not cost-recovery legislation is adopted. Thus, it would be in the carriers' interest to cooperate with PSAPs and jointly seek cost-recovery for both carrier costs and PSAP costs. In this regard, we note that some of the opposition to APCO's proposal may stem from a misconception that we support mandating a "bill and keep" approach. As we have stated repeated to the Commission, that is NOT what we propose. We merely support giving states the option of not adopting cost-recovery for carriers.

Third, the potential for PSAPs to obtain cost-recovery for their own expenses is probably much greater without carrier costs being at issue (indeed, several states have already followed that path and adopted cost-recovery only for PSAPs). PSAP cost of compliance with E9-1-1, while substantial for each PSAP, is a fraction of carriers' costs, especially for Phase II. Thus, a state legislature concerned about the size of a government mandated "9-1-1 fee" will be far more likely to adopt a fee to cover only PSAP costs than the much higher fee that would be necessary to cover both PSAP and carrier costs. Similarly, state legislators are increasingly suspicious that carriers will benefit financially from E9-1-1 capability. Wireless E9-1-1 will greatly enhance the safety aspects of wireless service at a time when most customers subscribe initially for safety-related reasons. Moreover, there are potential commercial

applications for the same technology that must be installed to satisfy Phase II. Thus, legislators are likely to question why they should mandate a fee structure to pay for a Phase II E9-1-1 technology that will benefit carriers.

APCO shares NENA's desire to implement wireless E9-1-1 as soon as possible. We also recognize that implementation will often require state legislation to provide mechanisms to recover the E9-1-1 costs incurred by PSAPs. However, unlike NENA, we do not believe that it is necessary or desirable for the Commission to require that carrier costs be recovered through a government-sponsored and government administered cost-recovery mechanism. We believe that this perceived requirement in the current Commission rules has delayed E9-1-1 implementation to date, and will cause even greater delays for Phase II of the rules.

On November 5, 1999, a group of wireless carriers submitted an *ex parte* letter to the Commission repeating their objections to APCO's proposal. APCO has already addressed most of those objections above and in its prior submissions in this proceeding. However a few of the issues in the industry letter require additional comment.

The carriers challenge APCO's assertion that the current interpretation of the cost-recovery requirement has led to delays in implementation, and suggest that real progress has occurred, pointing to the 30 states that have adopted some form of cost-recovery for Phase I. Yet, that benchmark should have been met long ago, not a year and a half after the original Phase I target date. Furthermore, where are the other 20 states in the process, and where are the cost-recovery provisions for the far more expensive and complex Phase II of the rules? No State, to APCO's knowledge, has adopted cost-recovery for Phase II. APCO believes that the entire E9-1-1 process will move much faster if states no longer need to adopt cumbersome and controversial procedures to reimburse carrier costs.

The carriers' letter also repeats the claim that changing the interpretation of cost-recovery will somehow undo the existing cost-recovery provisions adopted in some states. Again, APCO reiterates that it does not support a requirement that states adopt "bill and keep" or any other specific cost-recovery mechanism. States that have acted to date are free to leave the process intact and to move forward to address Phase II, but with the added flexibility suggested in APCO's proposal.

The carriers also suggest once again that APCO's proposal will somehow eliminate cooperation between carriers and PSAPs. In fact, leaving the process as it is will merely perpetuate the ability of carriers to "just say no". As discussed above, we believe that giving states greater options in determining whether and how to create carrier cost recovery will increase, not decrease, the incentives for carriers to cooperate with PSAPs.

Therefore we urge the Commission to move forward and modify or clarify its rules as we have previously suggested.

Respectfully submitted,



Joe Hanna  
President

cc: Commissioner Susan Ness  
Commissioner William Powell  
Commissioner Gloria Tristani  
Commissioner Harold Furchtgott-Roth  
Ari Fitzgerald, Esq.  
Mark Schneider, Esq.  
Peter Tenhula, Esq.  
Adam Krinsky, Esq.  
Bryan Tramont, Esq.  
Thomas Sugrue, Chief WTB  
James Schlichting, Deputy Chief, WTB  
Mark Adams, Esq.